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MONTANA LEGISLATIVE HISTORY

Chapter 3 Session L 1985
Bill House 4 Senate ____

History and final status sheet X
Introduced bill X
Fiscal note NA
Third reading bill X
Final version of bill X

House Committee on Judiciary
Hearing date(s)* 1-8
Executive action (vote) date(s)* 1-8
Comm. Report 1-8
Floor 2nd reading & vote 1-10
Floor 3rd reading & vote 1-12

Senate Committee on State Administration
Hearing date(s)* 1-22
Executive action (vote) date(s)* 1-22
Comm. Report 1-22
Floor 2nd reading & vote 1-23
Floor 3rd reading & vote 1-25

Conference or Free Conference Comm. ____ Yes X No
Hearing date(s)* ____
Executive action (vote) date(s)* ____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? ____ Yes X No
Committee ____ Report ____

NOTES:

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Compiled by: sjl
Date: 2-3-16

CHAPTER NUMBER 246 EFFECTIVE DATE: 7/01/85

HB 3 INTRODUCED BY MARKS
RAISE MINIMUM FOREST FIRE PROTECTION ASSESSMENT TO $30
BY REQUEST OF INTERIM SUBCOMMITTEE NO. 2

1/07	INTRODUCED		
1/07	REFERRED TO STATE ADMINISTRATION		
1/09	HEARING		
1/09	COMMITTEE REPORT-BILL DO PASS		
1/10	FISCAL NOTE REQUESTED		
1/11	2ND READING PASS	89	9
1/12	3RD READING PASS	86	7
	TRANSMITTED TO SENATE		
1/14	REFERRED TO FINANCE & CLAIMS		
1/14	FISCAL NOTE RECEIVED		
1/18	HEARING		
1/25	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
2/08	COMM REPORT-BILL CONCURRED AS AMENDED		
2/12	2ND READING CONCURRED AS AMENDED	50	0
2/14	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE WITH AMENDMENTS		
3/05	2ND READING AMENDMENTS NOT CONCURRED	85	5
3/09	CONFERENCE COMMITTEE APPOINTED		
4/18	CONFERENCE COMMITTEE DISSOLVED		
4/18	FREE CONFERENCE COMMITTEE APPOINTED		
4/18	FREE CONFERENCE COMMITTEE REPORT		
	HOUSE		
4/19	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	83	10
4/19	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	94	4
	SENATE		
4/19	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	49	1
4/19	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	49	0
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
4/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 643 EFFECTIVE DATE: 7/01/85		

HB 4 INTRODUCED BY MANUEL
GENERALLY AMEND TITLES 1, 2, 3, 5, 13, 25, 27, AND 45, MCA
BY REQUEST OF CODE COMMISSIONER

1/07	INTRODUCED		
1/07	REFERRED TO JUDICIARY		
1/08	HEARING		
1/08	COMMITTEE REPORT-BILL PASS AS AMENDED		
1/10	2ND READING PASS	93	6

1/12	3RD READING PASS	90	2
	TRANSMITTED TO SENATE		
1/14	REFERRED TO STATE ADMINISTRATION		
1/22	HEARING		
1/22	COMMITTEE REPORT-BILL CONCURRED		
1/23	2ND READING CONCURRED	49	0
1/25	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
1/30	SIGNED BY SPEAKER		
1/30	SIGNED BY PRESIDENT		
1/30	TRANSMITTED TO GOVERNOR		
2/04	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 3 EFFECTIVE DATE: 10/01/85		

HB 5 INTRODUCED BY MANUEL
CLARIFY LEGISLATOR COMPENSATION AND EXPENSES
BY REQUEST OF LEGISLATIVE COUNCIL

1/07	INTRODUCED		
1/07	REFERRED TO STATE ADMINISTRATION		
1/09	HEARING		
1/09	COMMITTEE REPORT-BILL DO PASS		
1/10	FISCAL NOTE REQUESTED		
1/12	2ND READING PASS AS AMENDED	72	20
1/14	3RD READING PASS	87	8
1/14	FISCAL NOTE RECEIVED		
	TRANSMITTED TO SENATE		
1/15	REFERRED TO STATE ADMINISTRATION		
1/25	HEARING		
1/26	COMMITTEE REPORT-BILL CONCURRED		
1/28	2ND READING CONCURRED	48	0
1/30	3RD READING CONCURRED	47	2
	RETURNED TO HOUSE		
2/02	SIGNED BY SPEAKER		
2/02	SIGNED BY PRESIDENT		
2/04	TRANSMITTED TO GOVERNOR		
2/05	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 8 EFFECTIVE DATE: 2/05/85		

HB 6 INTRODUCED BY MARKS
GENERALLY CLARIFY MINING AND WATER LAW
BY REQUEST OF CODE COMMISSIONER

1/07	INTRODUCED		
1/07	REFERRED TO NATURAL RESOURCES		
1/09	HEARING		
1/15	COMMITTEE REPORT-BILL PASS AS AMENDED		
1/17	2ND READING PASS	97	0
1/19	3RD READING PASS	84	0
	TRANSMITTED TO SENATE		
1/22	REFERRED TO NATURAL RESOURCES		
1/30	HEARING		
1/31	COMMITTEE REPORT-BILL CONCURRED		

HOUSE BILL NO. 4

AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS, PUBLIC RETIREMENT SYSTEMS, AND CRIMES; AMENDING SECTIONS 1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101, 45-2-101, 45-9-111, AND 45-9-116, MCA; AND REPEALING SECTIONS 2-7-101 AND 3-5-212, MCA.

Section 1. 1-11-204. The provision that the Code Commissioner must submit a certified report to the Legislature is an unnecessary formality. The report is published in the first volume of the annotations to the Montana Code Annotated and is accessible to anyone. The amendment would make no change in the required contents of the report.

Section 2. 2-4-611. The two references in subsection (2) to "the legal assistance program" were inserted in 1979 in anticipation of the 1979 Legislature's passage of a program by that name. The bill was vetoed. A generic name change in subsection (2) is made to avoid any construction of the subsection as referring to or by implication mandating a specific program.

Section 3. 2-7-517. The bill enacting this section incorrectly referred to "2-15-516". The correct reference, "2-7-516", was substituted during codification of the act to the Montana Code Annotated, with brackets to indicate the substitution. This bill deletes the brackets and legislates 2-7-516 as the correct section reference.

Section 4. 2-15-2007. A compiler's comment under this section of the Montana Code Annotated states:

"Commissioner Correction: This section was passed as subsection (2) of section 8, Ch. 274, L. 1981, and was added as an amendment. This subsection was substantive law, but the accompanying subsections are not. In codifying this section the code commissioner added the bracketed material to reflect the context in which the subsection was passed."

This bill deletes the brackets, thus legislating the bracketed language.

Section 5. 3-1-607. This section is amended to delete the prohibition on a judge running for a judicial office the term of which commences earlier than his existing term of office. The prohibition was declared unconstitutional in a Montana Supreme Court opinion. The case note for that

opinion, contained in the annotations to the Montana Code Annotated, reads:

"Article VII, sec. 10, Mont. Const., providing that one holding a judicial position forfeits that position by filing for an elective public office other than a judicial position, requires a Judge to forfeit his judicial office if he files for either a legislative or executive office. While it does not affirmatively declare that a Judge does not forfeit his judicial office by filing for another judicial office, that is its intent as shown by the minutes of the Constitutional Convention and that is what it means. Sections 3-1-607 and 3-1-608 forbid what Art. VII, sec. 10, Mont. Const., authorizes and are therefore unconstitutional as being in direct conflict with Art. VII, sec. 10, Mont. Const. The Comm. for an Effective Judiciary v. St., __M__, 679 P2d 1223, 41 St. Rep. 581 (1984)."

Section 6. 3-2-104. The deleted material (as well as section 3-5-212, MCA, containing similar language) was found unconstitutional in Coate v. Omholt, __M__, 662 P2d 591, 40 St. Rep. 586 (1983), as violating the separation of powers doctrine, and the impairment of contract and diminution of salaries provisions of the Montana Constitution.

Section 7. 5-4-306. Language was added to subsections (2) and (3) to conform them to Article VI, section 10, of the Montana Constitution, as amended in 1982. That amendment provided for a veto override by poll of the Legislature if a bill is vetoed after the end of the session.

Section 8. 5-7-203. The exception at the beginning of the section is deleted because 5-7-304 was repealed in 1980. That section read: "5-7-304. Exemption from license and registration requirement. Any person who limits his lobbying solely to appearances before legislative committees of either house and registers his appearance on the records of such committees in writing shall not be required to be licensed as a lobbyist, pay a license fee, or register with the secretary of state."

Section 9. 13-10-505. The added words simply clarify that the exception relates to filling of vacancies and not to nominations in nonpartisan elections.

Section 10. 13-27-312. The brackets at the beginning and end of subsection (3) are deleted. In preparation of the composite of Chapter 336 and Chapter 488, Laws of 1983, amendments to this section, the Code Commissioner set out in a separate bracketed subsection (3), the amendatory language in Chapter 336 pertaining to the preparation by the Attorney

General of a fiscal statement, although the language had been inserted in former subsection (2), which was entirely deleted by Chapter 488. The language was included because it appeared to reflect a separable concept not in conflict with Chapter 488 and the apparent intent was to incorporate the concept into the law. By deleting the brackets, this bill legislates the bracketed language.

Sections 11 and 12. 25-7-204 and 25-7-206. A 1983 amendment to 25-7-202 provided that the judge or the jury commissioner draw the ballots. Formerly, only the judge drew them. Sections 25-7-204 and 25-7-206 were not, but should have been, correspondingly amended. This bill makes those amendments.

Section 13. 25-35-602. The 40-day time period in the next-to-last paragraph of this form is changed to 10 days to be consistent with 25-35-605(1), which fixes the time period.

Section 14. 27-27-101. This amendment is made because St. v. Montana Livestock Sanitary Board, 135 M 202, 339 P2d 487 (1959), held this section unconstitutional under Montana Constitution, Article VII, sections 2 and 4, to the extent that it authorizes a Writ of Prohibition in regard to ministerial functions.

Section 15. 45-2-101. In subsection (69)(b), "$150" is changed to "$300". Subsection (69) defines "value". Chapter 581, Laws of 1983, raised from $150 to $300 the "value" of what is taken in theft and fraud offenses before the offense becomes a felony. If "value" is over $300, the offense is a felony. If "value" is $300 or less, the offense is a misdemeanor. Chapter 581 should have raised "$150" to "$300" in 45-2-101(69)(b) to conform to what Chapter 581 did.

Sections 16 through 18. 45-9-101 through 45-9-103. The reference in each section to "an opiate, as defined in 50-32-101(18)" is incorrect. "Opiate" is defined in subsection (19) of 50-32-101, not subsection (18). Prior to 1983, "opiate" was defined in subsection (18), but the 1983 Legislature inserted a new subsection (14) in 50-32-101 and renumbered the following subsections. Thus, the subsection defining "opiate" was renumbered from (18) to (19). Inadvertently, the three references, in 45-9-101 through 45-9-103, to 50-32-101(18) were not changed to 50-32 101(19).

Sections 19 and 20. 45-9-111 and 45-9-116. One word defined in 45-9-111 is also used in the text of that

section; therefore, this bill makes the definitions in 45-9-111 apply to that section. Section 45-9-116 is amended for clarity and to be consistent with the amendment made in section 16. If operative provisions do not apply to the persons listed in 45-9-116(1), it was certainly intended that related definitions also do not apply.

Section 21. Repealer.

2-7-101. These definitions were used only in 2-7-102, which was repealed in 1983. The section is thus obsolete and unnecessary.

3-5-212. See explanation for section 6.

HOUSE BILL NO. 4

INTRODUCED BY MANUEL

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS, PUBLIC RETIREMENT SYSTEMS, AND CRIMES; AMENDING SECTIONS 1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101, 45-2-101, 45-9-101 THROUGH 45-9-103, 45-9-111, AND 45-9-116, MCA; AND REPEALING SECTIONS 2-7-101 AND 3-5-212, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1-11-204, MCA, is amended to read:

"1-11-204. Duties of code commissioner. (1) Prior to January 1, 1979, the code commissioner shall recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication.

(2) Prior to January 1, 1979, the commissioner shall prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report

shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change.

(3) Prior to the November 1 immediately preceding each regular legislative session, the commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate any duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(4) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) Statutory history of each code section;

(b) Annotations of state and federal court decisions relating to the subject matter of the code;

(c) Such editorial notes, cross-references, and other matter as the commissioner considers desirable or advantageous;

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(d) The Declaration of Independence;

(e) The Constitution of the United States of America and amendments thereto;

(f) Acts of congress relating to the authentication of laws and records;

(g) The Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments thereto;

(j) The Ordinances relating to federal relations and elections;

(k) Rules of civil, criminal, and appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and

(l) A complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(5) After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and

generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and ~~submit to each legislature~~ publish a report ~~certified as the~~ entitled "Official Report of the Montana Code Commissioner--(year)" which indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last such report.

(6) From time to time the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Section 2. Section 2-4-611, MCA, is amended to read:

"2-4-611. Hearing examiners -- legal services unit -- conduct of hearings -- disqualification of hearing examiners and agency members. (1) An agency may appoint hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from ~~the~~ an agency legal assistance program, if any, within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal

assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing."

Section 3. Section 2-7-517, MCA, is amended to read:

"2-7-517. Penalty. When a governmental entity has failed to make payment as required by ~~{~~2-7-516~~}~~ within 60

days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the governmental entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment shall be released and paid to the governmental entity."

Section 4. Section 2-15-2007, MCA, is amended to read:

"2-15-2007. Highway traffic safety program. The ~~{~~highway traffic safety~~}~~ program ~~{~~provided for in 61-2-102~~}~~ is attached ~~{~~to the department of justice~~}~~ for administrative purposes only as prescribed in 2-15-121. However, the program may hire its own personnel, and 2-15-121(2)(d) does not apply."

Section 5. Section 3-1-607, MCA, is amended to read:

"3-1-607. Supreme court justice or district court judge ~~not to run for~~ candidacy for nonjudicial office -- resignation required. (1) If a person occupying the office of chief justice or associate justice of the supreme court or judge of a district court of the state of Montana becomes a candidate for election to any elective office under the laws of the state of Montana other than a judicial position, he shall immediately, and in any event at or before the time when he must file as a candidate for such office in any primary or special or general election, resign from his office of chief justice, associate justice, or district

judge.

(2) The resignation becomes effective immediately upon its delivery to the proper officer or superior.

(3) The resignation requirement applies except when the person is a bona fide candidate for reelection to the identical office then occupied by him or for another nonpartisan judicial ~~office--the--term--of--which--does--not commence-earlier-than-the-end-of-the-term-of-the-office-then occupied-by-him~~ position."

Section 6. Section 3-2-104, MCA, is amended to read:

"3-2-104. Salaries -- expenses. (1) The salaries of justices of the supreme court are provided for in 2-16-405.

~~(2)--If-any-cause,-motion,-or-other-proceeding--remains pending--and--undecided--for--a--period--of--90--days--after submission-for-decision,-the-justice-of--the--supreme--court who--has--been--assigned--to--write--the--opinion,-order,-or decision-of-the-court-shall-submit-an-affidavit-on-or-before the-90th-day-to-the-chief-justice--setting--forth--the--case name,--cause--number,-and-the-reason-the-matter-has-not-been decided.-Copies-of-the-affidavit-must-be--furnished--to--all parties--to--the--matter--pending.-A-cause,-motion,-or-other proceeding-is-considered-submitted--for--decision--when--all hearings-have-been-held-and-final-briefs-have-been-submitted by-all-parties-to-the-matter-pending.-Upon-the-filing-of-the affidavit,--the--justice-shall-have-an-additional-30-days-to decide-the--matter--which--has--been--submitted.--No--cause, motion,--or--other--proceeding-may-remain-undecided-for-more than-120-days-after--submission--for--decision--without--the approval--of--a-majority-of-the-other-members-of-the-supreme court-for--good--cause--shown--in--an--affidavit--requesting additional--time.-If-a-justice-of-the-supreme-court-violates the-provisions-of--this--section,--any--party--to--a--matter pending-in-violation-of-this-section-or,-by-a-majority-vote, the--other-members-of-the-supreme-court-may-refer-the-matter to-the-judicial-standards-commission.-If-the--court,--acting upon--the--recommendation--of-the-commission,-determines-the justice-is-not-in-compliance-with--this--section,--it--shall order-that-the-state-auditor-not-issue-a-warrant-for-payment of--services--for--1--month,--which--pay-is-forfeited-by-the justice.~~

~~(3)~~(2) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties."

Section 7. Section 5-4-306, MCA, is amended to read:

"5-4-306. Return when legislature not in session. (1) If, on the day the governor desires to return a bill without his approval and with his objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his

message to the presiding officer, secretary, clerk, or any member of such house. Such delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of such delivery and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall immediately mail a copy of the bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members of each house present, the secretary of state shall poll the members of the legislature, and if two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(3) The legislature may reconvene to reconsider any bill so vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session."

Section 8. Section 5-7-203, MCA, is amended to read:

"5-7-203. Principal -- name of lobbyist on docket. ~~Except as provided in 5-7-304, every~~ Every principal who employs any lobbyist shall within 1 week after such employment cause the name of said lobbyist to be entered

upon the docket. It shall also be the duty of the lobbyist to enter his name upon the docket. Upon the termination of such employment, such fact may be entered opposite the name of the lobbyist either by the lobbyist or the principal."

Section 9. Section 13-10-505, MCA, is amended to read:

"13-10-505. Applicability. The provisions of 13-10-501 through 13-10-504 shall not be used to fill vacancies or to nominate candidates in nonpartisan elections except for nominations to fill a vacancy as provided in 13-25-205."

Section 10. Section 13-27-312, MCA, is amended to read:

"13-27-312. Review of petition by attorney general -- preparation of statements -- fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and, if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of such effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note. If the petition

form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general may, if he deems it necessary, appoint a five-member committee to recommend the statement of purpose and the statement of the implications of the measure. The committee shall consist of two persons recommended by the person filing the petition, two persons known to oppose the measure, and one representative of the attorney general's office, who is the chairman. The committee shall, within 14 days of appointment, meet and recommend by a vote of a majority of the committee:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(2) The attorney general may accept, reject, or modify the statements recommended by the committee. If the committee is unable to recommend one or both statements, the attorney general shall prepare the statements.

~~(3)~~ The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, such statement to be used on the petition and ballot if the measure is placed on the ballot.~~

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(5) The statement of purpose prepared pursuant to subsection (1) or (2), unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 10 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general."

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Section 11. Section 25-7-204, MCA, is amended to read:

"25-7-204. Mode of drawing ballots. Before the first ballot shall have been drawn, the box must be closed and well shaken so as to thoroughly mix the ballots therein. The district judge or the jury commissioner must draw at random a ballot with the juror's name thereon. Upon stipulation of counsel, the court may order the clerk to draw ballots."

Section 12. Section 25-7-206, MCA, is amended to read:

"25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the judge or the jury commissioner ~~shall~~, pursuant to an order of the court to be entered in the minutes, shall, in the presence of two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified ~~under an order made as prescribed in this section~~, the court may make ~~another order or successive orders~~ or order further drawings until a sufficient number is obtained.

(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same

manner as any other trial juror regularly drawn and notified. He is subject to the same exceptions and challenges as any other trial juror."

Section 13. Section 25-35-602, MCA, is amended to read:

"25-35-602. Form of complaint and order of court/notice to defendant. The sworn complaint and order of the court shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF ..... COUNTY, MONTANA

BEFORE ....., JUSTICE OF THE PEACE

.....

.....

Plaintiff,

vs. Complaint

..... Case No. .....

.....

Defendant(s)

.....

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that defendant is indebted to plaintiff in the sum of $....., for.....

.....

.....

which sum is now due, owing, and unpaid despite demands for the payment thereof, together with plaintiff's costs herein expended.

Dated this ..... day of ....., 19....

.....

Plaintiff

.....

Plaintiff's address

Subscribed and sworn to before me this ..... day of ....., 19....

.....

Justice of the peace

By:.....

Clerk, small claims division

ORDER OF COURT/

NOTICE TO DEFENDANT

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby directed to appear and answer the within and foregoing complaint at:

.....

.....

on ..... at ....

Reset for ..... at ....

Reset for ..... at ....

Reset for ..... at ....

and to have with you, then and there, all books, papers, and witnesses needed by you to establish your defense to the claim; and you are further notified that in case you do not appear, judgment will be taken against you by default for the relief demanded in the complaint and for costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are hereby further notified that, within ~~40~~ 10 days of service upon you of this complaint and order, you may remove this action from the small claims court to justice's court, and that your failure to remove shall constitute a waiver of your rights to trial by jury and to representation by counsel.

To the Sheriff, Constable, or Server of process of said county, greetings:

Make legal service and due return thereof on the defendant at .....

Dated this .... day of ....., 19....

.....

Justice of the peace

By:.....

Clerk, small claims division"

Section 14. Section 27-27-101, MCA, is amended to

read:

"27-27-101. Definition and function of writ of prohibition. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person, ~~whether~~ exercising ~~functions~~ judicial ~~or--ministerial,~~ functions when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person."

Section 15. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything

regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any

jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the

sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance,

or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(49) "Pecuniary benefit" is benefit in the form of

money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine or human readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public

or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the

purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(67) "Tamper" means to interfere with something

improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property

at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the

value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than ~~$150~~ $300 by the standards set forth in subsection (69)(a) above, its value shall be considered to be an amount less than $150.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 16. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers

to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101~~(18)~~(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term.

(4) A person convicted of criminal sale of dangerous

drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 17. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

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(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101~~(18)~~(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence of imprisonment.

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 18. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses 1 kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101~~(18)~~(19), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section."

Section 19. Section 45-9-111, MCA, is amended to read:

"45-9-111. Imitation dangerous drugs -- definitions. As used in ~~45-9-112~~ 45-9-111 through 45-9-116 and 45-9-202, the following definitions apply:

(1) "Dangerous drug" has the meaning given to that term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a

dangerous drug.

(3) "Person" includes any individual, business association, partnership, or corporation."

Section 20. Section 45-9-116, MCA, is amended to read:

"45-9-116. Imitation dangerous drugs -- exemptions -- rules. (1) Sections ~~45-9-112~~ 45-9-111 through 45-9-115 do not apply to:

(a) a person authorized by rules adopted by the board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose."

NEW SECTION. Section 21. Repealer. Sections 2-7-101

and 3-5-212, MCA, are repealed.

-End-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 8, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, January 8, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present.

ORGANIZATIONAL MEETING: Chairman Hannah held a brief organizational meeting prior to the hearing scheduled this day to introduce the members of the committee, the staff researcher and the secretary to one another.

HOUSE BILL NO. 109: Hearing commenced on House Bill No. 109 (Remove Statutory Conflict on Charging Costs to Convicted Defendants). In support of this bill, the chief sponsor, Representative Ted Schye, District #18, testified. He presented the committee with a letter written to him by David L. Nielsen, attorney at law explaining the reason the bill was introduced. (See attached Exhibit A). Mr. Schye stated that he did not request anyone else to come to testify in support of the bill. There being no further proponents or opponents for HB 109, Chairman Hannah opened the meeting up for discussion.

Also available for questioning was Marc Racicot attorney from the Attorney General's Office. Mr. Racicot stated that some defendant's financial situations may vary dramatically and that even if the defendant cannot afford a lawyer at the beginning of the proceedings, he may be able to pay the costs in the future, and, if so, he should be able to do so. Mr. Racicot further stated that this could be used as a rehabilitative tool. There being no further discussion, Chairman Hannah closed discussion on HB 109.

HOUSE BILL NO. 83: Chief sponsor for HB 83, Representative Hal Harper, District 44, testified before the committee. Representative Harper introduced HB 83 on request of one of his constituents. He stated that the Landlord Tenant Act proved to be ineffective in protecting his constituent's (Ms. Hermanson) property and finances from the malfeasance of bad tenants. In order to remedy this problem, Representative Harper feels that this bill will provide that a landlord may apply for a restraining order without notice to the tenant in order to prevent further damage to his property when the said landlord is seeking termination of the rental agreement because of damage or destruction.

Also testifying in support of the bill was Gloria Hermanson, a property owner. She told the committee of the bad personal experience she had last year as a property owner with destructive

tenants.

Mr. Terry Carmody, representing the Montana Association of Realtors, desired to go on record as supporting HB 83.

There being no further proponents or opponents testifying on behalf of HB 83, Chairman Hannah opened the meeting for discussion.

Representative Montayne stated that he felt uneasy with the bill in its present form because of the possiblity of landlords abusing this law with trivial complaints.

Representative Harper stated that he felt the bill would protect the tenant as well as landlords. Several members directed questions towards Ann Sheehy and talked about the jurisdiction problems this bill may present. Representative Brown's question was in regard to what remedy does this bill provide that is in addition to the existing remedy, "27-19-315." Ms. Sheehy again referred to the section following Section 70-24-422, MCA as possibly being amended.

There being no further testimony, Chairman Hannah presented HB 4 for consideration.

HOUSE BILL NO. 4: Because the chief sponsor for HB 4, Representative Rex Manuel had to leave, Representative Dave Brown testified in support of the bill.

Mr. John MacMaster, attorney from the Legislative Council, went through each of the sections with the committee and commented accordingly. The Code Commissioner Bill - Summary is attached herein as Exhibit C. Mr. MacMaster pointed out a few corrections that needed to be made: Page 2 of the Summary, line 42 should be corrected to read "1981" instead of "1983." Furthermore, on page 4, line 4, instead of "section 16" it should read "section 19." Mr. MacMaster commented on section 5 that once section 3-1-607 is amended, section 3-1-608 will be acceptable as is.

At this point, Mr. MacMaster proposed the following amendment -- a copy which is attached hereto and referred to as Exhibit D:

Page 33, line 6
Following: "than"
Strike: "$150"
Insert: "$300"

Representative Dave Brown made some closing comments. He stated that the code commissioner is not allowed to legislate the code commissioner bills. Representative Brown also briefly commented on section 6.

Several questions were directed towards Mr. MacMaster. One pertained to the judicial positions and filing of other legislative positions as referred to in section 5. Representative Keyser had questions pertaining to section 4 on deleting the bracketed language. He requested information from the session laws from the 1981 Legislature.

EXECUTIVE SESSION: Chairman Hannah called an executive session at this time. Action was taken on the following bills:

ACTION ON HOUSE BILL NO. 109: Representative Budd Gould moved that HB 109 DO PASS. Representative O'Hara seconded the motion, and Chairman Hannah requested a roll call vote after no further discussion was had. The motion passed unanimously.

ACTION ON HOUSE BILL 4: Representative Bergene moved that HB 4 DO PASS. The motion was seconded. However, at this time, Mr. MacMaster suggested that another amendment be made. The proposed amendment is as follows: Amend the title, line 7 by striking "PUBLIC RETIREMENT SYSTEMS,". Representative Eudaily moved the amendment DO PASS; the motion was seconded by Mr. Keyser and passed unanimously. Representative Rapp-Svrcek moved the first amendment proposed by Mr. MacMaster (Exhibit D) DO PASS. The motion was seconded by Representative Addy and carried unanimously. Representative Gould moved that HB 4 DO PASS AS AMENDED. The motion was seconded by Representative Brown. A roll call vote was taken and passed unanimously as amended.

HOUSE BILL 83: Further discussion was had on HB 83 with Representative Mercer stating that he did not feel an amendment would be appropriate for this bill. Representative Addy moved to amend as follows: Page 2, line 20 by striking the words, "3-day period" and inserting in lieu thereof the words, "during the period that the tenant remains in the possession of the premises after receiving a 3-day notice." That motion was seconded by Representative O'Hara.

Both Representatives Poff and O'Hara stated that they have had problems in the past with destructive tenants and wanted this problem remedied. Representative Addy discussed with the members the effect of the temporary restraining order. Representative Mercer wants the language changed so that the restraining order can be served as soon as it is applied for. Representative Mercer moved to amend the bill by striking lines 23 and 24 and inserting in lieu thereof "it is issued."

Chairman Hannah informed the committee members at this time that action on HB 83 would be postponed until this Friday.

ADJOURN: There being no further business, the meeting was adjourned at 10:15 a.m.

Thomas E. Hannah
TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1/8/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/8/85 BILL NO. HB. 4 TIME

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Representative Gould moved that HB 4 DO PASS AS AMENDED. Said motion was seconded by Representative Brown. Motion passed unanimously.

EXHIBIT C
1/8/85
HB 4

HOUSE BILL NO. 4

AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS, PUBLIC RETIREMENT SYSTEMS, AND CRIMES; AMENDING SECTIONS 1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101, 45-2-101, 45-9-111, AND 45-9-116, MCA; AND REPEALING SECTIONS 2-7-101 AND 3-5-212, MCA.

Section 1. 1-11-204. The provision that the Code Commissioner must submit a certified report to the Legislature is an unnecessary formality. The report is published in the first volume of the annotations to the Montana Code Annotated and is accessible to anyone. The amendment would make no change in the required contents of the report.

Section 2. 2-4-611. The two references in subsection (2) to "the legal assistance program" were inserted in 1979 in anticipation of the 1979 Legislature's passage of a program by that name. The bill was vetoed. A generic name change in subsection (2) is made to avoid any construction of the subsection as referring to or by implication mandating a specific program.

Section 3. 2-7-517. The bill enacting this section incorrectly referred to "2-15-516". The correct reference, "2-7-516", was substituted during codification of the act to the Montana Code Annotated, with brackets to indicate the substitution. This bill deletes the brackets and legislates 2-7-516 as the correct section reference.

Section 4. 2-15-2007. A compiler's comment under this section of the Montana Code Annotated states:

"Commissioner Correction: This section was passed as subsection (2) of section 8, Ch. 274, L. 1981, and was added as an amendment. This subsection was substantive law, but the accompanying subsections are not. In codifying this section the code commissioner added the bracketed material to reflect the context in which the subsection was passed."

This bill deletes the brackets, thus legislating the bracketed language.

Section 5. 3-1-607. This section is amended to delete the prohibition on a judge running for a judicial office the term of which commences earlier than his existing term of office. The prohibition was declared unconstitutional in a Montana Supreme Court opinion. The case note for that

opinion, contained in the annotations to the Montana Code Annotated, reads:

"Article VII, sec. 10, Mont. Const., providing that one holding a judicial position forfeits that position by filing for an elective public office other than a judicial position, requires a Judge to forfeit his judicial office if he files for either a legislative or executive office. While it does not affirmatively declare that a Judge does not forfeit his judicial office by filing for another judicial office, that is its intent as shown by the minutes of the Constitutional Convention and that is what it means. Sections 3-1-607 and 3-1-608 forbid what Art. VII, sec. 10, Mont. Const., authorizes and are therefore unconstitutional as being in direct conflict with Art. VII, sec. 10, Mont. Const. The Comm. for an Effective Judiciary v. St., __M__, 679 P2d 1223, 41 St. Rep. 581 (1984)."

Section 6. 3-2-104. The deleted material (as well as section 3-5-212, MCA, containing similar language) was found unconstitutional in Coate v. Omholt, __M__, 662 P2d 591, 40 St. Rep. 586 (1983), as violating the separation of powers doctrine, and the impairment of contract and diminution of salaries provisions of the Montana Constitution.

Section 7. 5-4-306. Language was added to subsections (2) and (3) to conform them to Article VI, section 10, of the Montana Constitution, as amended in 1982. That amendment provided for a veto override by poll of the Legislature if a bill is vetoed after the end of the session.

Section 8. 5-7-203. The exception at the beginning of the section is deleted because 5-7-304 was repealed in 1980. That section read: "5-7-304. Exemption from license and registration requirement. Any person who limits his lobbying solely to appearances before legislative committees of either house and registers his appearance on the records of such committees in writing shall not be required to be licensed as a lobbyist, pay a license fee, or register with the secretary of state."

Section 9. 13-10-505. The added words simply clarify that the exception relates to filling of vacancies and not to nominations in nonpartisan elections.

Section 10. 13-27-312. The brackets at the beginning and end of subsection (3) are deleted. In preparation of the composite of Chapter 336 and Chapter 488, Laws of 1981, 1981 amendments to this section, the Code Commissioner set out in a separate bracketed subsection (3), the amendatory language in Chapter 336 pertaining to the preparation by the Attorney

General of a fiscal statement, although the language had been inserted in former subsection (2), which was entirely deleted by Chapter 488. The language was included because it appeared to reflect a separable concept not in conflict with Chapter 488 and the apparent intent was to incorporate the concept into the law. By deleting the brackets, this bill legislates the bracketed language.

Sections 11 and 12. 25-7-204 and 25-7-206. A 1983 amendment to 25-7-202 provided that the judge or the jury commissioner draw the ballots. Formerly, only the judge drew them. Sections 25-7-204 and 25-7-206 were not, but should have been, correspondingly amended. This bill makes those amendments.

Section 13. 25-35-602. The 40-day time period in the next-to-last paragraph of this form is changed to 10 days to be consistent with 25-35-605(1), which fixes the time period.

Section 14. 27-27-101. This amendment is made because St. v. Montana Livestock Sanitary Board, 135 M 202, 339 P2d 487 (1959), held this section unconstitutional under Montana Constitution, Article VII, sections 2 and 4, to the extent that it authorizes a Writ of Prohibition in regard to ministerial functions.

Section 15. 45-2-101. In subsection (69)(b), "$150" is changed to "$300". Subsection (69) defines "value". Chapter 581, Laws of 1983, raised from $150 to $300 the "value" of what is taken in theft and fraud offenses before the offense becomes a felony. If "value" is over $300, the offense is a felony. If "value" is $300 or less, the offense is a misdemeanor. Chapter 581 should have raised "$150" to "$300" in 45-2-101(69)(b) to conform to what Chapter 581 did.

Sections 16 through 18. 45-9-101 through 45-9-103. The reference in each section to "an opiate, as defined in 50-32-101(18)" is incorrect. "Opiate" is defined in subsection (19) of 50-32-101, not subsection (18). Prior to 1983, "opiate" was defined in subsection (18), but the 1983 Legislature inserted a new subsection (14) in 50-32-101 and renumbered the following subsections. Thus, the subsection defining "opiate" was renumbered from (18) to (19). Inadvertently, the three references, in 45-9-101 through 45-9-103, to 50-32-101(18) were not changed to 50-32 101(19).

Sections 19 and 20. 45-9-111 and 45-9-116. One word defined in 45-9-111 is also used in the text of that

section; therefore, this bill makes the definitions in 45-9-111 apply to that section. Section 45-9-116 is amended for clarity and to be consistent with the amendment made in section 19. If operative provisions do not apply to the persons listed in 45-9-116(1), it was certainly intended that related definitions also do not apply.

Section 21. Repealer.

2-7-101. These definitions were used only in 2-7-102, which was repealed in 1983. The section is thus obsolete and unnecessary.

3-5-212. See explanation for section 6.

EXHIBIT D
1/8/85
HB 4

AMENDMENT TO HB 4, INTRODUCED COPY

1. Page 33, line 6.
Following: "than"
Strike: "$150"
Insert: "$300"

This amendment is proposed by the Legislative Council because the amendment should have been, but inadvertently was not, made when the bill was drafted. The amendment does the same thing as is done two lines above the amended line.

STANDING COMMITTEE REPORT

January 8 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 4

FIRST reading copy (WHITE color)

GENERALLY AMEND TITLES 1, 2, 3, 5, 13, 25, 27, AND 45, MCA

Respectfully report as follows: That HOUSE Bill No. 4

BE AMENDED AS FOLLOWS:

1) Title, page 1, line 7
Strike: "PUBLIC RETIREMENT SYSTEMS,"

2) Page 33, line 6
Following: "than"
Strike: "$150"
Insert: "$300"

AND AS AMENDED,
DO PASS

1/8/85

REPRESENTATIVE HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

37

Strike: section 8 in its entirety
Renumber: subsequent sections

And, as amended, do pass. Report adopted.

HB 41, referred to the committee of the whole without recommendation. Report adopted. 1/10/85

EDUCATION AND CULTURAL RESOURCES (Harrington, Chairman): 1/9/85

HB 15, do pass. Report adopted.

HUMAN SERVICES AND AGING (Keenan, Chairman): 1/9/85
HB 44, introduced bill, be amended as follows:

1. Page 2, line 8.
Following: "(3),"
Insert: "after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242,"

2. Page 3, line 21.
Following: "(3),"
Insert: "after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242,"

And, as amended, do pass. Report adopted.

HB 52, do pass. Report adopted.

Adverse Committee Report
HB 46, do not pass.

STATE ADMINISTRATION (Sales, Chairman): 1/10/85
HB 13, do pass. Report adopted.
HB 14, do pass. Report adopted.

Adverse Committee Report

HB 82, do not pass. Thereupon, the adverse committee report was adopted as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bergene, Bradley, Brandewie, D. Brown, J. Brown, Campbell, Cobb, Cody, Cohen, Compton, Connelly, Darko, Devlin, Donaldson, Ellerd, Ellison, Ernst, Eudaily, Gilbert, Glaser, Gould, Grady, Hammond, Hand, Hannah, Hanson, Harbin, Harp, Harper, Hayne, Holliday, Howe, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Keyser, Kitselman, Koehnke, Krueger, Lory, McCormick, Manuel, Marks, Mercer, Miles, Miller, J.K. Moore, J. Moore, Nathe, Nelson, O'Hara, Patterson, Peck, Peterson, Phillips, Pistoria, Poff, Quilici, Ramirez, Raney, Rapp-Svrcek, Rehberg, Sales, Sands, Schultz, Schye, Simon, Smith, Spaeth, Swift, Switzer, Thoft, Thomas, Waldron, Wallin, Williams, Winslow, Zabrocki, Mr. Speaker.
Total 88

Noes: Driscoll, Fritz, Garcia, Hansen, Harrington, Hart, Menahan, Montayne, Nisbet, O'Connell, Pavlovich, Ream.
Total 12

Excused: None.
Total 0

Absent or not voting: None.
Total 0

MOTIONS

Representative Pavlovich moved that HB 97 be taken from the Committee on Business and Labor and rereferred to the Committee on Judiciary. Motion carried.

Representative Spaeth moved that Stimatz, Story, Kitselman, Schultz, and Hammond be added as sponsors to HJR 2. Motion carried.

Representative Bradley moved that Montayne, Patterson, Connelly, and Pavlovich be added as sponsors to HB 99. Motion carried.

Representative Koehnke moved that Lane, Grady, Zabrocki, Bachini, Peck, Wallin, Bengtson, and Lybeck be added as sponsors to HB 24. Motion carried.

FIRST READING AND COMMITMENT OF BILLS AND RESOLUTIONS

The following House bills were introduced, read first time, and referred to committees:

HB 128, introduced by Kitselman. Referred to Committee on Local Government.
HB 129, introduced by Kitselman. Referred to Committee on Education and Cultural Resources.
HB 130, introduced by Kitselman. Referred to Committee on Taxation.
HB 131, introduced by Holliday, Kitselman, J.K. Moore, Patterson, Phillips, Nathe, Hanson, O'Hara, Glaser, Miller, McCallum, Ernst, Pistoria, Harper, Bachini. Referred to Committee on State Administration.
HB 132, introduced by Waldron. Referred to Committee on Business and Labor.
HB 133, introduced by Waldron. Referred to Committee on Local Government.
HB 134, introduced by Pavlovich, (By Request of the Fire Marshal Bureau). Referred to Committee on State Administration.
HB 135, introduced by Manuel, Schye. Referred to Committee on Local Government.
HB 136, introduced by Ellison, (By Request of the Department of Fish, Wildlife, and Parks). Referred to Committee on Fish and Game.
HB 137, introduced by Driscoll, (By Request of the Department of Labor and Industry). Referred to Committee on Business and Labor.
HB 138, introduced by Lory, (By Request of the Department of Labor and Industry). Referred to Committee on Business and Labor.
HB 139, introduced by Phillips, (By Request of the Department of Fish, Wildlife, and Parks). Referred to Committee on State Administration.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Representative Harper moved that the House resolve itself into a Committee of the Whole, for the consideration of business on second reading. Motion carried. Representative Harrington in the Chair.

Mr. Speaker: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

HB 4 - That HB 4 do pass. Motion carried as follows:

Ayes: Abrams, Addy, Bachini, Bardanouve, Bergene, Bradley, Brandewie, D. Brown, J. Brown, Campbell, Cobb, Cody, Cohen, Compton, Connelly,

Darko, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fritz, Garcia, Gilbert, Glaser, Gould, Grady, Hammond, Hand, Hansen, Hanson, Harbin, Harp, Harper, Harrington, Hart, Hayne, Holliday, Howe, Iverson, Jenkins, Kadas, Keenan, Keller, Kennerly, Keyser, Kitselman, Koehnke, Krueger, Lory, McCormick, Manuel, Marks, Menahan, Mercer, Miles, Miller, Montayne, J.K. Moore, J. Moore, Nelson, Nisbet, O'Connell, O'Hara, Patterson, Pavlovich, Peck, Peterson, Phillips, Pistoria, Poff, Quilici, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Sands, Schultz, Schye, Simon, Smith, Spaeth, Swift, Switzer, Thoft, Thomas, Waldron, Wallin, Williams, Winslow, Zabrocki, Mr. Speaker.
Total 93

Noes: Asay, Devlin, Hannah, Jones, Nathe, Sales.
Total 6

Excused: Donaldson.
Total 1

Absent or not voting: None.
Total 0

HB 94 - That HB 94, statement of intent, be amended as follows:

1. Statement of intent.
Strike: entire statement of intent
Insert: "This amendment to 61-3-535 transfers rulemaking authority to the division of motor vehicles for the purpose of administering laws relating to light vehicle reregistration by mail. This section currently grants this rulemaking authority to the department of revenue.

The office of the legislative auditor recommended in April 1984, in a performance audit, to request the change of rulemaking authority. The motor vehicle division has been and is currently performing the function described in 61-3-535. It is the intent of this amendment to correct this situation by clearly placing rulemaking authority for light vehicle reregistration by mail with the division of motor vehicles. Rules adopted should implement the procedure currently being used by the division performing reregistration by mail."

Amendment passed as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bergene, Bradley, Brandewie, D. Brown, J. Brown, Campbell, Cobb, Cody, Cohen, Compton, Connelly, Darko, Devlin, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fritz, Garcia, Gilbert, Glaser, Gould, Grady, Hammond, Hand, Hannah, Hansen, Hanson, Harbin, Harp, Harper, Harrington, Hart, Hayne, Holliday, Howe, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Keyser, Kitselman, Koehnke, Krueger, Lory, McCormick, Manuel, Marks, Menahan, Mercer, Miles, Miller, Montayne, J.K. Moore, J. Moore, Nathe, Nelson, Nisbet, O'Connell, O'Hara, Patterson, Pavlovich, Peck, Peterson, Phillips, Pistoria, Poff, Quilici, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Sales, Sands, Schultz, Schye, Simon, Smith, Spaeth, Swift, Switzer, Thoft, Thomas, Waldron, Wallin, Williams, Winslow, Zabrocki, Mr. Speaker.
Total 99

Noes: None.
Total 0

Excused: Donaldson.
Total 1

Absent or not voting: None.
Total 0

That HB 94, as amended, do pass. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bergene, Bradley, Brandewie, D. Brown, J. Brown, Campbell, Cobb, Cody, Cohen, Compton, Connelly, Darko, Devlin, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fritz, Garcia, Gilbert, Glaser, Gould, Grady, Hammond, Hand, Hannah, Hansen, Hanson, Harbin, Harp, Harper, Harrington, Hart, Hayne, Holliday, Howe, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Keyser, Kitselman, Koehnke, Krueger, Lory, McCormick, Manuel, Marks, Menahan, Mercer, Miles, Miller, Montayne, J.K. Moore, J. Moore, Nathe, Nelson, Nisbet, O'Connell, O'Hara, Patterson, Pavlovich, Peck, Peterson, Phillips, Pistoria, Poff, Quilici, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Sales, Sands, Schultz, Schye, Simon, Smith, Spaeth, Swift, Switzer, Thoft, Thomas, Waldron, Wallin, Williams, Winslow, Zabrocki, Mr. Speaker.
Total 99

Noes: None.
Total 0

Excused: Donaldson.
Total 1

Absent or not voting: None.
Total 0

Representative Harper moved that the committee rise and report. Motion carried. Committee arose. House resumed. Mr. Speaker in the Chair. Chairman Harrington moved the adoption of the committee report. Report adopted. (97-1)

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

Representative Harper moved that the House adjourn until 10:30 a.m., January 11, 1985.

Motion carried.

House adjourned at 2:04 p.m.

John Vincent, Speaker

Ed Smith, Chief Clerk

Rehberg, Sales, Sands, Schultz, Schye, Simon, Smith, Spaeth, Swift, Switzer, Thoft, Thomas, Wallin, Williams, Zabrocki, Mr. Speaker.
Total 91

Noes: J.K. Moore.
Total 1

Excused: Driscoll, Garcia, Harrington, Howe, Ramirez, Waldron, Winslow.
Total 7

Absent or not voting: Menahan.
Total 1

HB 44 - That HB 44 do pass. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bergene, Bradley, Brandewie, D. Brown, J. Brown, Campbell, Cobb, Cody, Cohen, Compton, Connelly, Darko, Devlin, Donaldson, Ellerd, Ellison, Ernst, Eudaily, Fritz, Gilbert, Glaser, Gould, Grady, Hammond, Hand, Hannah, Hansen, Hanson, Harbin, Harp, Harper, Hart, Hayne, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Keyser, Kitselman, Koehnke, Lory, McCormick, Manuel, Marks, Menahan, Mercer, Miles, Miller, Montayne, J.K. Moore, J. Moore, Nathe, Nelson, Nisbet, O'Connell, O'Hara, Patterson, Pavlovich, Peck, Peterson, Phillips, Pistoria, Poff, Quilici, Raney, Rapp-Svrcek, Ream, Rehberg, Sands, Schultz, Schye, Simon, Smith, Spaeth, Swift, Switzer, Thoft, Thomas, Wallin, Williams, Zabrocki, Mr. Speaker.
Total 91

Noes: Krueger, Sales.
Total 2

Excused: Driscoll, Garcia, Harrington, Howe, Ramirez, Waldron, Winslow.
Total 7

Absent or not voting: None.
Total 0

Representative Harper moved that the committee rise and report. Motion carried. Committee arose. House resumed. Mr. Speaker in the Chair. Chairman Addy moved the adoption of the committee report. Report adopted. (93-0)

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

HB 3 passed as follows:

Ayes: Abrams, Addy, Asay, Bergene, Bradley, Brandewie, D. Brown, J. Brown, Campbell, Cobb, Cody, Cohen, Compton, Connelly, Darko, Devlin, Donaldson, Ellerd, Ellison, Ernst, Eudaily, Fritz, Gilbert, Glaser, Grady, Hammond, Hand, Hannah, Hansen, Hanson, Harbin, Harp, Harper, Hayne, Holliday, Iverson, Jenkins, Jones, Keenan, Keller, Kennerly, Keyser, Kitselman, Koehnke, Krueger, Lory, McCormick, Marks, Menahan, Mercer, Miles, Miller, Montayne, J.K. Moore, J. Moore, Nathe, Nelson, Nisbet, O'Connell, O'Hara, Patterson, Pavlovich, Peterson, Phillips, Pistoria, Poff, Quilici, Raney, Rapp-Svrcek, Ream, Rehberg, Sales, Sands, Schultz, Schye, Simon, Smith, Spaeth, Swift, Switzer, Thoft, Thomas, Wallin, Williams, Zabrocki, Mr. Speaker.
Total 86

Noes: Bachini, Bardanouve, Gould, Hart, Kadas, Manuel, Peck.
Total 7

Excused: Driscoll, Garcia, Harrington, Howe, Ramirez, Waldron, Winslow.
Total 7

Absent or not voting: None.
Total 0

HB 4 passed as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bergene, Bradley, Brandewie, D. Brown, J. Brown, Campbell, Cobb, Cody, Cohen, Compton, Connelly, Darko, Devlin, Donaldson, Ellerd, Ernst, Eudaily, Fritz, Gilbert, Glaser, Gould, Grady, Hammond, Hand, Hannah, Hansen, Hanson, Harbin, Harp, Harper, Hart, Hayne, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Keyser, Kitselman, Koehnke, Krueger, Lory, McCormick, Manuel, Marks, Menahan, Mercer, Miles, Miller, Montayne, J.K. Moore, J. Moore, Nelson, Nisbet, O'Connell, O'Hara, Patterson, Pavlovich, Peck, Peterson, Phillips, Pistoria, Poff, Quilici, Raney, Rapp-Svrcek, Ream, Rehberg, Sands, Schultz, Schye, Simon, Smith, Spaeth, Swift, Switzer, Thoft, Thomas, Wallin, Williams, Zabrocki, Mr. Speaker.
Total 90

Noes: Nathe, Sales.
Total 2

Excused: Driscoll, Garcia, Harrington, Howe, Ramirez, Waldron, Winslow.
Total 7

Absent or not voting: Ellison.
Total 1

HB 13 passed as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bergene, Bradley, Brandewie, D. Brown, J. Brown, Campbell, Cobb, Cody, Cohen, Compton, Connelly, Darko, Devlin, Donaldson, Ellerd, Ellison, Ernst, Eudaily, Fritz, Gilbert, Glaser, Gould, Grady, Hammond, Hand, Hannah, Hansen, Hanson, Harbin, Harp, Harper, Hart, Hayne, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Keyser, Kitselman, Koehnke, Krueger, Lory, McCormick, Manuel, Marks, Menahan, Mercer, Miles, Miller, Montayne, J.K. Moore, J. Moore, Nathe, Nelson, Nisbet, O'Connell, O'Hara, Patterson, Pavlovich, Peck, Peterson, Phillips, Pistoria, Poff, Quilici, Raney, Rapp-Svrcek, Ream, Rehberg, Sales, Sands, Schultz, Schye, Simon, Smith, Spaeth, Swift, Switzer, Thoft, Thomas, Wallin, Williams, Zabrocki, Mr. Speaker.
Total 93

Noes: None.
Total 0

Excused: Driscoll, Garcia, Harrington, Howe, Ramirez, Waldron, Winslow.
Total 7

Absent or not voting: None.
Total 0

HB 20 passed as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouve, Bergene, Bradley, Brandewie, D. Brown, J. Brown, Campbell, Cobb, Cody, Cohen, Compton, Connelly, Darko, Devlin, Donaldson, Ellerd, Ernst, Eudaily, Fritz, Gilbert, Glaser, Gould, Grady, Hammond, Hand, Hannah, Hansen, Hanson, Harbin,

HOUSE BILL NO. 4

INTRODUCED BY MANUEL

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS, ~~PUBLIC--RETIREMENT--SYSTEMS,~~ AND CRIMES; AMENDING SECTIONS 1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101, 45-2-101, 45-9-101 THROUGH 45-9-103, 45-9-111, AND 45-9-116, MCA; AND REPEALING SECTIONS 2-7-101 AND 3-5-212, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1-11-204, MCA, is amended to read:

"1-11-204. Duties of code commissioner. (1) Prior to January 1, 1979, the code commissioner shall recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication.

(2) Prior to January 1, 1979, the commissioner shall prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change.

(3) Prior to the November 1 immediately preceding each regular legislative session, the commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate any duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(4) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) Statutory history of each code section;

(b) Annotations of state and federal court decisions relating to the subject matter of the code;

(c) Such editorial notes, cross-references, and other matter as the commissioner considers desirable or advantageous;

(d) The Declaration of Independence;

(e) The Constitution of the United States of America and amendments thereto;

(f) Acts of congress relating to the authentication of laws and records;

(g) The Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments thereto;

(j) The Ordinances relating to federal relations and elections;

(k) Rules of civil, criminal, and appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and

(l) A complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(5) After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and

generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and ~~submit to each legislature~~ publish a report ~~certified as the~~ entitled "Official Report of the Montana Code Commissioner--(year)" which indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last such report.

(6) From time to time the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Section 2. Section 2-4-611, MCA, is amended to read:

"2-4-611. Hearing examiners -- legal services unit -- conduct of hearings -- disqualification of hearing examiners and agency members. (1) An agency may appoint hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from ~~the~~ an agency legal assistance program, if any, within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal

assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing."

Section 3. Section 2-7-517, MCA, is amended to read:

"2-7-517. Penalty. When a governmental entity has failed to make payment as required by ~~{~~2-7-516~~}~~ within 60

days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the governmental entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment shall be released and paid to the governmental entity."

Section 4. Section 2-15-2007, MCA, is amended to read:

"2-15-2007. Highway traffic safety program. The ~~{~~highway traffic safety~~}~~ program ~~{~~provided for in 61-2-102~~}~~ is attached ~~{~~to the department of justice~~}~~ for administrative purposes only as prescribed in 2-15-121. However, the program may hire its own personnel, and 2-15-121(2)(d) does not apply."

Section 5. Section 3-1-607, MCA, is amended to read:

"3-1-607. Supreme court justice or district court judge ~~not-to-run-for~~ candidacy for nonjudicial office -- resignation required. (1) If a person occupying the office of chief justice or associate justice of the supreme court or judge of a district court of the state of Montana becomes a candidate for election to any elective office under the laws of the state of Montana other than a judicial position, he shall immediately, and in any event at or before the time when he must file as a candidate for such office in any primary or special or general election, resign from his office of chief justice, associate justice, or district

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judge.

(2) The resignation becomes effective immediately upon its delivery to the proper officer or superior.

(3) The resignation requirement applies except when the person is a bona fide candidate for reelection to the identical office then occupied by him or for another nonpartisan judicial ~~office--the--term--of--which--does--not commence-earlier-than-the-end-of-the-term-of-the-office-then occupied-by-him~~ position."

Section 6. Section 3-2-104, MCA, is amended to read:

"3-2-104. Salaries -- expenses. (1) The salaries of justices of the supreme court are provided for in 2-16-405.

~~(2)--If-any-cause,-motion,-or-other-proceeding--remains pending--and--undecided--for--a--period--of--90--days--after submission-for-decision,-the-justice-of--the--supreme--court who--has--been--assigned--to--write--the--opinion,-order,-or decision-of-the-court-shall-submit-an-affidavit-on-or-before the-90th-day-to-the-chief-justice--setting--forth--the--case name,--cause--number,-and-the-reason-the-matter-has-not-been decided.-Copies-of-the-affidavit-must-be--furnished--to--all parties--to--the--matter--pending.-A-cause,-motion,-or-other proceeding-is-considered-submitted--for--decision--when--all hearings-have-been-held-and-final-briefs-have-been-submitted by-all-parties-to-the-matter-pending.-Upon-the-filing-of-the affidavit,--the--justice-shall-have-an-additional-30-days-to

~~decide-the--matter--which--has--been--submitted.--No--cause, motion,--or--other--proceeding-may-remain-undecided-for-more than-120-days-after--submission--for--decision--without--the approval--of--a-majority-of-the-other-members-of-the-supreme court-for--good--cause--shown--in--an--affidavit--requesting additional--time.-If-a-justice-of-the-supreme-court-violates the-provisions-of--this--section,--any--party--to--a--matter pending-in-violation-of-this-section-or,-by-a-majority-vote, the--other-members-of-the-supreme-court-may-refer-the-matter to-the-judicial-standards-commission.-If-the--court,--acting upon--the--recommendation--of-the-commission,-determines-the justice-is-not-in-compliance-with--this--section,--it--shall order-that-the-state-auditor-not-issue-a-warrant-for-payment of--services--for--1--month,--which--pay-is-forfeited-by-the justice.~~

~~(3)~~(2) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties."

Section 7. Section 5-4-306, MCA, is amended to read:

"5-4-306. Return when legislature not in session. (1) If, on the day the governor desires to return a bill without his approval and with his objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his

message to the presiding officer, secretary, clerk, or any member of such house. Such delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of such delivery and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall immediately mail a copy of the bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members of each house present, the secretary of state shall poll the members of the legislature, and if two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(3) The legislature may reconvene to reconsider any bill so vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session."

Section 8. Section 5-7-203, MCA, is amended to read:

"5-7-203. Principal -- name of lobbyist on docket. ~~Except as provided in 5-7-304, every~~ Every principal who employs any lobbyist shall within 1 week after such employment cause the name of said lobbyist to be entered

upon the docket. It shall also be the duty of the lobbyist to enter his name upon the docket. Upon the termination of such employment, such fact may be entered opposite the name of the lobbyist either by the lobbyist or the principal."

Section 9. Section 13-10-505, MCA, is amended to read:

"13-10-505. Applicability. The provisions of 13-10-501 through 13-10-504 shall not be used to fill vacancies or to nominate candidates in nonpartisan elections except for nominations to fill a vacancy as provided in 13-25-205."

Section 10. Section 13-27-312, MCA, is amended to read:

"13-27-312. Review of petition by attorney general -- preparation of statements -- fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and, if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of such effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note. If the petition

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form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general may, if he deems it necessary, appoint a five-member committee to recommend the statement of purpose and the statement of the implications of the measure. The committee shall consist of two persons recommended by the person filing the petition, two persons known to oppose the measure, and one representative of the attorney general's office, who is the chairman. The committee shall, within 14 days of appointment, meet and recommend by a vote of a majority of the committee:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(2) The attorney general may accept, reject, or modify the statements recommended by the committee. If the committee is unable to recommend one or both statements, the attorney general shall prepare the statements.

~~(~~(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, such statement to be used on the petition and ballot if the measure is placed on the ballot.~~)~~

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(5) The statement of purpose prepared pursuant to subsection (1) or (2), unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 10 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general."

Section 11. Section 25-7-204, MCA, is amended to read:

"25-7-204. Mode of drawing ballots. Before the first ballot shall have been drawn, the box must be closed and well shaken so as to thoroughly mix the ballots therein. The district judge or the jury commissioner must draw at random a ballot with the juror's name thereon. Upon stipulation of counsel, the court may order the clerk to draw ballots."

Section 12. Section 25-7-206, MCA, is amended to read:

"25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the judge or the jury commissioner ~~shall~~, pursuant to an order of the court to be entered in the minutes, shall, in the presence of two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified ~~under an order made as prescribed in this section~~, the court may make ~~another order or successive orders~~ or order further drawings until a sufficient number is obtained.

(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same

manner as any other trial juror regularly drawn and notified. He is subject to the same exceptions and challenges as any other trial juror."

Section 13. Section 25-35-602, MCA, is amended to read:

"25-35-602. Form of complaint and order of court/notice to defendant. The sworn complaint and order of the court shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF ..... COUNTY, MONTANA

BEFORE ....., JUSTICE OF THE PEACE

.....

.....

Plaintiff,

vs. Complaint

..... Case No. .....

.....

Defendant(s)

.....

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that defendant is indebted to plaintiff in the sum of $....., for.....

.....

.....

which sum is now due, owing, and unpaid despite demands for the payment thereof, together with plaintiff's costs herein expended.

Dated this ..... day of ....., 19....

.....

Plaintiff

.....

Plaintiff's address

Subscribed and sworn to before me this ..... day of ....., 19....

.....

Justice of the peace

By:.....

Clerk, small claims division

ORDER OF COURT/

NOTICE TO DEFENDANT

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby directed to appear and answer the within and foregoing complaint at:

.....

.....

on ..... at ....

Reset for ..... at ....

Reset for ..... at ....

Reset for ..... at ....

and to have with you, then and there, all books, papers, and witnesses needed by you to establish your defense to the claim; and you are further notified that in case you do not appear, judgment will be taken against you by default for the relief demanded in the complaint and for costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are hereby further notified that, within ~~40~~ 10 days of service upon you of this complaint and order, you may remove this action from the small claims court to justice's court, and that your failure to remove shall constitute a waiver of your rights to trial by jury and to representation by counsel.

To the Sheriff, Constable, or Server of process of said county, greetings:

Make legal service and due return thereof on the defendant at .....

Dated this .... day of ....., 19....

.....

Justice of the peace

By:.....

Clerk, small claims division"

Section 14. Section 27-27-101, MCA, is amended to

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read:

"27-27-101. Definition and function of writ of prohibition. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person, ~~whether~~ exercising ~~functions~~ judicial ~~or ministerial~~ functions when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person."

Section 15. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything

regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

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(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any

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jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the

sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance,

or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(49) "Pecuniary benefit" is benefit in the form of

money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine or human readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public

or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the

purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(67) "Tamper" means to interfere with something

improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property

at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the

value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than ~~$150~~ $300 by the standards set forth in subsection (69)(a) above, its value shall be considered to be an amount less than ~~$150~~ $300.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 16. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers

to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101~~(18)~~(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term.

(4) A person convicted of criminal sale of dangerous

drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 17. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101~~(18)~~(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence of imprisonment.

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 18. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses 1 kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101~~(18)~~(19), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section."

Section 19. Section 45-9-111, MCA, is amended to read:

"45-9-111. Imitation dangerous drugs -- definitions. As used in ~~45-9-112~~ 45-9-111 through 45-9-116 and 45-9-202, the following definitions apply:

(1) "Dangerous drug" has the meaning given to that term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a

dangerous drug.

(3) "Person" includes any individual, business association, partnership, or corporation."

Section 20. Section 45-9-116, MCA, is amended to read:

"45-9-116. Imitation dangerous drugs -- exemptions -- rules. (1) Sections ~~45-9-112~~ 45-9-111 through 45-9-115 do not apply to:

(a) a person authorized by rules adopted by the board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose."

NEW SECTION. Section 21. Repealer. Sections 2-7-101

and 3-5-212, MCA, are repealed.

-End-

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 22, 1985

The eighth meeting of the State Administration Committee was called to order at 10 a.m. on January 22, 1985 by Chairman Jack Haffey, in Room 331 of the Capitol Building.

ROLL CALL: All members were present with Senator Manning and Senator Tveit arriving late.

CONSIDERATION OF SENATE JOINT RESOLUTION 6: Senator Chet Blaylock, Senate District 43, is the sponsor of this bill. Senator Blaylock said that this is a bill to name the new DNRC building after Senator Metcalf. He said that if you will read the bill, it lists all the things that Senator Metcalf did for our natural resources, such as water and air. He said he was not a perfect man, but he fought hard to preserve our natural resources. Senator Blaylock said consequently this is a fitting name for the DNRC building.

PROPONENTS: Karl Englund, Lobbyist for the Montana Trail Lawyers Association, and son of Brett Englund, Senator Metcalf's assistant, supports this Resolution. I know it was Senator Metcalf's highest priority to protect our natural resources.

Representative John Vicent, House District 80, said that Senator Metcalf was a unique man whose contributions should be honored. Please give your consideration to this request.

OPPONENTS: None.

EXECUTIVE ACTION ON SJR-6: There were no questions nor discussion by the Committee. Senator Manning made a motion that SJR-6 do pass. Senator Conover called question and SJR-6 was put to a vote. It was voted unanimously that SENATE JOINT RESOLUTION 6 DO PASS.

CONSIDERATION OF HOUSE BILL 4: Representative Manuel, House District 11, is the sponsor of this bill entitled, "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS, PUBLIC RETIREMENT SYSTEMS, AND CRIMES; AMENDING the appropriate sections. Senator Manuel said that this is a bill based on a request from the Code Commissioner and we have John McMaster to explain what the changes are. Mr. McMaster explained that there were some changes to the summary, mainly Page 1, line 3, Public Employees Retirement System should be removed; Page 2, line 42 change 1983 to 1981; Page 4, line 4, change reference from Section 16 to Section 19. Mr. McMaster went on to say that Section 1, the provision that the Code Commissioner must submit a certified report to the Legislature is an unnecessary formality. The report

is published in the first volume of the annotations to the Montana Code Annotated and everyone has one. Section 2 lists two references in subsection (2) to "the legal assistance program" were inserted in 1979 in anticipation of the 1979 Legislature's passage of a program by that name. The bill was vetoed. A generic name change in subsection (2) is made to avoid any construction of the subsection as referring to or by implication mandating a specific program. Section 3 this bill deltes the brackets and legislates 2-7-516 as the correct section reference. Section 4, this bill deletes the brackets; thus legislating the bracketed language. Section 5, if a judge runs for another office, he has to resign and that violates the Constitution. This will clarify the statutes, as the prohibition was declared unconstitutional in a Montana Supreme Court opinion. Senator Lynch asked why this would only apply to running for an elected office. Mr. McMaster answered that it does not provide that the judge cannot run for a judicial office, just an elected office. The judge forfeits by filing for an elected office that is not judicial. Section 6 which refers to a judge losing his salary if he does not issue a decision within a month, was found unconstitutional. In Section 7, language was added to subsections (2) and (3) to conform them to Article VI, section 10 of the Montana Constitution, as amended in 1982. That amendment provided for a veto override by poll of the Legislature if a bill is vetoed after the end of the session. Section 8 deletes reference to licensing lobbyists. Section 9 clarifies 13-10-505. Section 10 clarifies the intent of Laws of 1983 by deleting the brackets. Sections 11 and 12 make amendments to conform to 1983 acts. Section 13 this clarifies the time limit to be consistent with 25-35-605 (1). Section 14 amends 27-27-101 and it was declared unconstitutional. Section 15 changes 45-2-101 to read that a felony offense is anything over $300, otherwise if it is below this figure it is a misdemeanor. Section 16-21 will correct incorrect sections or subsections in the code.

PROPONENTS: There were no proponents.

OPPONENTS: There were no opponents.

Representative Manuel closed by saying he would like someone to carry this on the floor.

EXECUTIVE ACTION ON HOUSE BILL 4: Senator Haffey did not know whether we would have to make the changes to the summary. The Secretary of the Senate's Office advised us that we did not have to. Senator Lynch moved that we make the amendments and it was unanimously passed. Senator Lynch made a motion that House Bill 4 be concurred in. It was unanimously passed that HOUSE BILL 4 BE CONCURRED IN. Senator Lynch was appointed to carry this to the floor.

ROLL CALL

STATE ADMINISTRATION COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 1-22-85

NAME	PRESENT	ABSENT	EXCUSED
SEANTOR JACK HAFFEY, Chairman	✓		
SENATOR LES HIRSCH, Vice-Chairman	✓		
SENATOR JOHN ANDERSON	✓		
SENATOR MAX CONOVER	✓		
SENATOR WILLIAM FARRELL	✓		
SENATOR ETHEL HARDING	✓		
SENATOR J. D. LYNCH	✓		
SENATOR DICK MANNING	✓	Late ✓	
SENATOR JOHN MOHAR	✓		
SENATOR LARRY TVEIT	✓	Late ✓	

STANDING COMMITTEE REPORT

January 22 19 85

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE BILL No. 4

third reading copy (blue color)

GENERALLY AMEND TITLES 1, 2, 3, 5, 13, 25, 27, and 45 MCA

Respectfully report as follows: That HOUSE BILL No. 4

BE CONCURRED IN

XXXXXX

XXXXXXXXXX

Chairman.

2. Page 2, lines 7 and 8.
Following: "AGAINST"
Strike: the remainder of line 7 through "24" on line 8
Insert: "removing the legal drinking age of 19 years from the constitution and allowing the legal drinking age to be established by statute or initiative"

Amendment passed as follows:

Ayes: Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Haffey, Hager, Halligan, Harding, Himsl, Hirsch, Jacobson, Keating, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Smith, Stimatz, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 40

Noes: Aklestad, Anderson, Galt, Goodover, Hammond, Kolstad, Shaw, Stephens, Story.
Total 9

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

That SB 3, as amended, do pass. Motion carried as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Smith, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 47

Noes: Shaw.
Total 1

Excused: D. Manning.
Total 1

Absent or not voting: Stephens.
Total 1

SB 84 - That SB 84 do pass. Motion carried as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 49

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

SB 100 - That SB 100 do pass. Motion carried as follows:

Ayes: Bengtson, Blaylock, Brown, Christiaens, Conover, Daniels, Eck, Fuller, Haffey, Hager, Halligan, Jacobson, Lane, Lybeck, Lynch, R. Manning, Mazurek, Mohar, Neuman, Pinsoneault, Regan, Stimatz, Towe, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 27

Noes: Aklestad, Anderson, Boylan, Crippen, Farrell, Gage, Galt, Goodover, Hammond, Harding, Himsl, Hirsch, Keating, Kolstad, McCallum, Severson, Shaw, Smith, Stephens, Story, Thayer, Tveit.
Total 22

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

SB 117 - That SB 117 do pass. Motion carried as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 49

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

HB 4 - That HB 4 be concurred in. Motion carried as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 49

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

HB 7 - That HB 7 be concurred in. Motion carried as follows:

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

HB 87 - That HB 87 be concurred in. Motion carried as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 49

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

Senator Van Valkenburg moved that the committee rise and report. Motion carried. Committee arose. Senate resumed. Mr. President in the Chair. Chairman Farrell moved the adoption of the committee report. Report adopted.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SB 3 being a Constitutional amendment requiring a two-thirds vote of the Legislature, was sent to the House with the following vote:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 49

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

SB 84 passed as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 48

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: Harding.
Total 1

SB 100 passed as follows:

Ayes: Bengtson, Blaylock, Christiaens, Conover, Daniels, Eck, Fuller, Haffey, Hager, Halligan, Jacobson, Lane, Lybeck, Lynch, R. Manning, Mazurek, Mohar, Neuman, Pinsoneault, Stimatz, Towe, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 25

Noes: Aklestad, Anderson, Boylan, Brown, Crippen, Farrell, Gage, Galt, Goodover, Hammond, Harding, Himsl, Hirsch, Keating, Kolstad, McCallum, Regan, Severson, Shaw, Smith, Stephens, Story, Thayer, Tveit.
Total 24

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

SB 117 passed as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 49

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

HB 4 concurred in as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.

Total 49

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

HB 7 concurred in as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 49

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

HB 56 concurred in as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 49

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: None.
Total 0

HB 78 concurred in as follows:

Ayes: Aklestad, Anderson, Bengtson, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Eck, Farrell, Fuller, Gage, Galt, Goodover, Haffey, Hager, Halligan, Hammond, Harding, Hirsch, Jacobson, Keating, Kolstad, Lane, Lybeck, Lynch, R. Manning, Mazurek, McCallum, Mohar, Neuman, Pinsoneault, Regan, Severson, Shaw, Smith, Stephens, Stimatz, Story, Thayer, Towe, Tveit, Van Valkenburg, Williams, Yellowtail, Mr. President.
Total 48

Noes: None.
Total 0

Excused: D. Manning.
Total 1

Absent or not voting: Himsl.
Total 1

Senator Van Valkenburg moved that the Senate adjourn until 9:00 a.m., January 26, 1985.

Motion carried.

Senate adjourned at 4:28 p.m.

BILL NORMAN
President of the Senate

BONNIE WALLEM
Secretary of the Senate

HOUSE BILL NO. 4

INTRODUCED BY MANUEL

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS, ~~PUBLIC--RETIREMENT--SYSTEMS,~~ AND CRIMES; AMENDING SECTIONS 1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101, 45-2-101, 45-9-101 THROUGH 45-9-103, 45-9-111, AND 45-9-116, MCA; AND REPEALING SECTIONS 2-7-101 AND 3-5-212, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1-11-204, MCA, is amended to read:

"1-11-204. Duties of code commissioner. (1) Prior to January 1, 1979, the code commissioner shall recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication.

(2) Prior to January 1, 1979, the commissioner shall prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change.

(3) Prior to the November 1 immediately preceding each regular legislative session, the commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate any duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(4) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) Statutory history of each code section;

(b) Annotations of state and federal court decisions relating to the subject matter of the code;

(c) Such editorial notes, cross-references, and other matter as the commissioner considers desirable or advantageous;

REFERENCE BILL

(d) The Declaration of Independence;

(e) The Constitution of the United States of America and amendments thereto;

(f) Acts of congress relating to the authentication of laws and records;

(g) The Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments thereto;

(j) The Ordinances relating to federal relations and elections;

(k) Rules of civil, criminal, and appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and

(l) A complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(5) After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and

generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and ~~submit to each legislature~~ publish a report ~~certified as the~~ entitled "Official Report of the Montana Code Commissioner--(year)" which indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last such report.

(6) From time to time the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Section 2. Section 2-4-611, MCA, is amended to read:

"2-4-611. Hearing examiners -- legal services unit -- conduct of hearings -- disqualification of hearing examiners and agency members. (1) An agency may appoint hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from ~~the~~ an agency legal assistance program, if any, within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal

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assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing."

Section 3. Section 2-7-517, MCA, is amended to read:

"2-7-517. Penalty. When a governmental entity has failed to make payment as required by ~~{~~2-7-516~~}~~ within 60

days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the governmental entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment shall be released and paid to the governmental entity."

Section 4. Section 2-15-2007, MCA, is amended to read:

"2-15-2007. Highway traffic safety program. The ~~{~~highway traffic safety~~}~~ program ~~{~~provided for in 61-2-102~~}~~ is attached ~~{~~to the department of justice~~}~~ for administrative purposes only as prescribed in 2-15-121. However, the program may hire its own personnel, and 2-15-121(2)(d) does not apply."

Section 5. Section 3-1-607, MCA, is amended to read:

"3-1-607. Supreme court justice or district court judge ~~not-to-run-for~~ candidacy for nonjudicial office -- resignation required. (1) If a person occupying the office of chief justice or associate justice of the supreme court or judge of a district court of the state of Montana becomes a candidate for election to any elective office under the laws of the state of Montana other than a judicial position, he shall immediately, and in any event at or before the time when he must file as a candidate for such office in any primary or special or general election, resign from his office of chief justice, associate justice, or district

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judge.

(2) The resignation becomes effective immediately upon its delivery to the proper officer or superior.

(3) The resignation requirement applies except when the person is a bona fide candidate for reelection to the identical office then occupied by him or for another nonpartisan judicial ~~office--the--term--of--which--does--not commence-earlier-than-the-end-of-the-term-of-the-office-then occupied-by-him~~ position."

Section 6. Section 3-2-104, MCA, is amended to read:

"3-2-104. Salaries -- expenses. (1) The salaries of justices of the supreme court are provided for in 2-16-405.

~~(2)--If-any-cause,-motion,-or-other-proceeding--remains pending--and--undecided--for--a--period--of--90--days--after submission-for-decision,-the-justice-of--the--supreme--court who--has--been--assigned--to--write--the--opinion,-order,-or decision-of-the-court-shall-submit-an-affidavit-on-or-before the-90th-day-to-the-chief-justice--setting--forth--the--case name,--cause--number,-and-the-reason-the-matter-has-not-been decided.-Copies-of-the-affidavit-must-be--furnished--to--all parties--to--the--matter--pending.-A-cause,-motion,-or-other proceeding-is-considered-submitted--for--decision--when--all hearings-have-been-held-and-final-briefs-have-been-submitted by-all-parties-to-the-matter-pending.-Upon-the-filing-of-the affidavit,--the--justice-shall-have-an-additional-30-days-to-decide-the--matter--which--has--been--submitted.--No--cause, motion,--or--other--proceeding-may-remain-undecided-for-more than-120-days-after--submission--for--decision--without--the approval--of--a-majority-of-the-other-members-of-the-supreme court-for--good--cause--shown--in--an--affidavit--requesting additional--time.-If-a-justice-of-the-supreme-court-violates the-provisions-of--this--section,--any--party--to--a--matter pending-in-violation-of-this-section-or,-by-a-majority-vote, the--other-members-of-the-supreme-court-may-refer-the-matter to-the-judicial-standards-commission.-If-the--court,--acting upon--the--recommendation--of-the-commission,-determines-the justice-is-not-in-compliance-with--this--section,--it--shall order-that-the-state-auditor-not-issue-a-warrant-for-payment of--services--for--1--month,--which--pay-is-forfeited-by-the justice.~~

~~(3)~~(2) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties."

Section 7. Section 5-4-306, MCA, is amended to read:

"5-4-306. Return when legislature not in session. (1) If, on the day the governor desires to return a bill without his approval and with his objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his

message to the presiding officer, secretary, clerk, or any member of such house. Such delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of such delivery and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall immediately mail a copy of the bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members of each house present, the secretary of state shall poll the members of the legislature, and if two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(3) The legislature may reconvene to reconsider any bill so vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session."

Section 8. Section 5-7-203, MCA, is amended to read:

"5-7-203. Principal -- name of lobbyist on docket. ~~Except--as--provided--in--5-7-304,-every~~ Every principal who employs any lobbyist shall within 1 week after such employment cause the name of said lobbyist to be entered

upon the docket. It shall also be the duty of the lobbyist to enter his name upon the docket. Upon the termination of such employment, such fact may be entered opposite the name of the lobbyist either by the lobbyist or the principal."

Section 9. Section 13-10-505, MCA, is amended to read:

"13-10-505. Applicability. The provisions of 13-10-501 through 13-10-504 shall not be used to fill vacancies or to nominate candidates in nonpartisan elections except for nominations to fill a vacancy as provided in 13-25-205."

Section 10. Section 13-27-312, MCA, is amended to read:

"13-27-312. Review of petition by attorney general -- preparation of statements -- fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and, if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of such effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note. If the petition

form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general may, if he deems it necessary, appoint a five-member committee to recommend the statement of purpose and the statement of the implications of the measure. The committee shall consist of two persons recommended by the person filing the petition, two persons known to oppose the measure, and one representative of the attorney general's office, who is the chairman. The committee shall, within 14 days of appointment, meet and recommend by a vote of a majority of the committee:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(2) The attorney general may accept, reject, or modify the statements recommended by the committee. If the committee is unable to recommend one or both statements, the attorney general shall prepare the statements.

~~(~~(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, such statement to be used on the petition and ballot if the measure is placed on the ballot.~~)~~

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(5) The statement of purpose prepared pursuant to subsection (1) or (2), unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 10 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general."

Section 11. Section 25-7-204, MCA, is amended to read:

"25-7-204. Mode of drawing ballots. Before the first ballot shall have been drawn, the box must be closed and well shaken so as to thoroughly mix the ballots therein. The district judge or the jury commissioner must draw at random a ballot with the juror's name thereon. Upon stipulation of counsel, the court may order the clerk to draw ballots."

Section 12. Section 25-7-206, MCA, is amended to read:

"25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the judge or the jury commissioner ~~shall~~, pursuant to an order of the court to be entered in the minutes, shall, in the presence of two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified ~~under an order made as prescribed in this section~~, the court may make ~~another order or successive orders~~ or order further drawings until a sufficient number is obtained.

(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same

manner as any other trial juror regularly drawn and notified. He is subject to the same exceptions and challenges as any other trial juror."

Section 13. Section 25-35-602, MCA, is amended to read:

"25-35-602. Form of complaint and order of court/notice to defendant. The sworn complaint and order of the court shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF ..... COUNTY, MONTANA

BEFORE ....., JUSTICE OF THE PEACE

.....

.....

Plaintiff,

vs. Complaint

..... Case No. .....

.....

Defendant(s)

.....

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that defendant is indebted to plaintiff in the sum of $....., for.....

.....

.....

which sum is now due, owing, and unpaid despite demands for the payment thereof, together with plaintiff's costs herein expended.

Dated this ..... day of ....., 19....

.....
Plaintiff

.....
Plaintiff's address

Subscribed and sworn to before me this ..... day of ....., 19....

.....
Justice of the peace
By:.....
Clerk, small claims division

ORDER OF COURT/
NOTICE TO DEFENDANT

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby directed to appear and answer the within and foregoing complaint at:

.....
.....
on ..... at ....
Reset for ..... at ....
Reset for ..... at ....

Reset for ..... at ....

and to have with you, then and there, all books, papers, and witnesses needed by you to establish your defense to the claim; and you are further notified that in case you do not appear, judgment will be taken against you by default for the relief demanded in the complaint and for costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are hereby further notified that, within ~~40~~ 10 days of service upon you of this complaint and order, you may remove this action from the small claims court to justice's court, and that your failure to remove shall constitute a waiver of your rights to trial by jury and to representation by counsel.

To the Sheriff, Constable, or Server of process of said county, greetings:

Make legal service and due return thereof on the defendant at .....

Dated this .... day of ....., 19....

.....
Justice of the peace
By:.....
Clerk, small claims division"

Section 14. Section 27-27-101, MCA, is amended to

read:

"27-27-101. Definition and function of writ of prohibition. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person~~,--whether~~ exercising ~~functions~~ judicial ~~or--ministerial,~~ functions when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person."

Section 15. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything

regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any

jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the

sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance,

or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(49) "Pecuniary benefit" is benefit in the form of

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money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine or human readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public

or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the

purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(67) "Tamper" means to interfere with something

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improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property

at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the

value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than ~~$150~~ $300 by the standards set forth in subsection (69)(a) above, its value shall be considered to be an amount less than ~~$150~~ $300.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 16. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers

to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101~~(18)~~(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term.

(4) A person convicted of criminal sale of dangerous

drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 17. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101~~(18)~~(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence of imprisonment.

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 18. Section 45- -103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses 1 kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101~~(18)~~(19), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section."

Section 19. Section 45-9-111, MCA, is amended to read:

"45-9-111. Imitation dangerous drugs -- definitions. As used in ~~45-9-112~~ 45-9-111 through 45-9-116 and 45-9-202, the following definitions apply:

(1) "Dangerous drug" has the meaning given to that term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a

dangerous drug.

(3) "Person" includes any individual, business association, partnership, or corporation."

Section 20. Section 45-9-116, MCA, is amended to read:

"45-9-116. Imitation dangerous drugs -- exemptions -- rules. (1) Sections ~~45-9-112~~ 45-9-111 through 45-9-115 do not apply to:

(a) a person authorized by rules adopted by the board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose."

NEW SECTION. Section 21. Repealer. Sections 2-7-101

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and 3-5-212, MCA, are repealed.

-End-